



POLICE DEPARTMENT

December 31, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Andrew Roe  
Tax Registry No. 931080  
Narcotics Borough Bronx  
Disciplinary Case No. 2013-9825  
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The above-named member of the Department appeared before me on June 5, 2014, charged with the following:

1. Said SGT Andrew Roe, on or about February 1, 2012, at approximately 1816 hours, while assigned to the 46<sup>th</sup> Precinct and on duty, in the vicinity of 3 [REDACTED] Bronx County, abused his authority as a member of the New York City Police department, in that he questioned Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Alan Alvarez, Esq., Respondent was represented by John D'Alessandro, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty. Respondent had been patrolling this housing development for three months. When he saw Person A coming from the door of the building, Respondent did not recognize Person A as anyone he had seen before. There had

been a recent rash of robberies at this particular property. Respondent had been advised that these crimes were being committed by people who were not residents. He also needed to ascertain whether Person A was trespassing. Therefore, Respondent had sufficient legal authority to ask Person A where he lived and question him.

### SUMMARY OF EVIDENCE PRESENTED

#### The CCRB's Case

Person A, the complainant, was 38 years old at the time of this incident and a legal resident of [REDACTED] New York [REDACTED]. On February 1, 2012 Person A was brought to the hospital. The hospital's discharge paperwork noted that Person A's diagnosis included schizophrenia, behavioral disorder, impulse control disorder and mental retardation. It also stated that his mental status was disoriented and combative. CCRB Exhibit (CCRBX) 1. Person A was considered to have the intellectual capacity of a 7-year-old child. Given Person A's medical condition, the CCRB attorney determined Person A was not a competent witness and did not call him to testify.

Instead, CCRB called Migdalia Cosme, who witnessed some of the interaction between the police and Person A.

#### Migdalia Cosme

Migdalia Cosme has lived at [REDACTED] in the [REDACTED] for over thirty years. Cosme lived on the [REDACTED] floor with Person A for some time before she moved to a higher floor. Cosme has known Person A for approximately 20 years and was aware that he was mentally handicapped.



On February 1, 2012 at approximately 6:16 p.m., Cosme was returning from the store when she observed several police officers approach Person A in front of her building. Cosme saw Person A leaving their building before the questioning. It was not yet really dark, there were lights in front of the building and Cosme said she could see. Cosme did not see any objects in Person A's hands.

When she heard their conversation, Cosme was about 10 to 20 feet away from the police and Person A. Although she wasn't close to the officers, anyone could have heard them, she said, because they were speaking so loudly.

When the encounter by the front door in the front of the building first began, Cosme could not hear the first sentence spoken between Person A and the police. She heard the officers ask, "What are you doing here; are you selling drugs; what are you doing in this area?" She heard Person A respond, "I'm going to the store for my mommy."

Person A backed up while the officers were questioning him. As she walked towards her car to retrieve something, Cosme saw Person A running away from the police towards the rear of their building. While Person A ran, the officers chased him and caught up to him. Cosme stated that about five or six officers were present. She believed it was "maybe seconds" from the time she saw the police questioning Person A to the time Person A ran away. She saw the officers surround Person A. Then, Person A "flipped over a bannister" and wound up on the floor.

Although the officers told her not to get close she got closer anyway. Person A said to Cosme, "Ms. Penny, get my mommy, get my mommy." She then responded, "[REDACTED] just stay there, don't fight, you know, please don't fight them, I'm going to go get your mom."

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent is a 12-year member of the Department. On February 1, 2012 Respondent and Officer Dekoker were assigned to vertical patrol in the public housing area of [REDACTED] [REDACTED]. As Respondent was walking towards the rear of building [REDACTED] [REDACTED] noticed a man, who he later learned was Person A, walking away from the rear building door along the walkway.

Respondent had been assigned to this particular precinct's Housing Unit for three months and routinely patrolled in this building. Although Respondent had observed and become familiar with a lot of faces, he did not recognize Person A. As Person A was approaching, Respondent asked Person A, "Where are you coming from?" Then Person A "clenched up and began flailing, fighting and swinging his arms" at Respondent and Dekoker.

Respondent and Dekoker "attempted to restrain" [REDACTED]. A brief struggle ensued ending with Respondent and Dekoker taking Person A to the ground. The officers restrained Person A in handcuffs and called Emergency Service Unit (ESU). ESU responded to the scene, placed Person A in a restraint bed, and took him to the hospital.

Respondent explained his role while conducting vertical patrol in the housing developments, which he learned at the academy and through service training. At the time of this incident, there were a high number of violent crimes occurring in housing developments. As part of a strategy to combat those crimes, the police interacted with residents of the buildings to develop a rapport and acquire information. Respondent was informed that "this particular development at the time of this incident was experiencing a



high volume of violent crime, in particular robberies with shot guns.” Respondent had been informed that many of the perpetrators were off-property residents, who “don’t belong in the building, they don’t have a right to be in the building because they don’t live there; they come in and victimize the residents of the building.”

Respondent was trained to ask people on public housing property questions about why they are there. Residents are informed of the possibility of such encounters by signs. Signs posted in these developments read, “the police may ask you questions about your presence and just information gathering in regards to the violence and protecting the residents.” One of these signs was posted at [REDACTED] stated, “All persons are expected to cooperate with inquiries from NYCHA management, security guards, resident watch, and the police regarding compliance with these rules.” Respondent Exhibit (RX) B.

Respondent followed Interim Order 23 of 2010 when conducting vertical patrols.

Respondent explained one scenario he learned about during his training:

[I]f during a vertical patrol an officer notices someone, the officer had been assigned to this development fairly regularly over the past several months and has gotten to know many of the residents of the building, the officer has never seen this person before, when requested the person voluntarily shows valid identification establishing a right to be in the building.

Respondent explained that if Person a responded to his questioning by saying he was a resident of the building, the inquiries would have stopped there. Respondent did not observe Person a committing any crimes at the time of his observations but he needed to ascertain whether Person a was trespassing. He asked Person a a question to find out why Person a was there.

When he questioned Person A, Respondent was patrolling only with Officer Dekoker. It was not until after EMS responded, that more officers were temporarily on the scene.

Person A was not arrested on this date. No weapons or contraband were recovered from his person. Respondent only realized Person A was mentally disabled "once everything was said and done." Respondent said all of the interactions between himself and Person A took place in the rear of the building. Respondent said Person A never attempted to run away from the officers.

### FINDINGS AND ANALYSIS

#### Background

There is no dispute that on February 1, 2012 near [REDACTED] Street in [REDACTED] County, Respondent approached and questioned Person A. The issue is whether Respondent had the legal authority to do so.

CCRB determined that the complainant, Person A, was not competent to testify. Migdalia Cosme testified that she saw the police officers and Person A speaking. Although she saw their lips moving, she was too far away to hear the first statement that the officers made to Person A. As Respondent's attorney noted, CCRB did not bring any charges against Respondent related to what Cosme alleged happened after Person A was initially questioned.

The CCRB attorney argued that officers cannot question persons on housing development property based on their physical presence alone, citing *People v. De Bour* and its progeny. He claimed that apart from Person A's presence on the housing development



property, Respondent presented no objective credible reason to request information from **Person A**.

However, Respondent gave other reasons for questioning Person A besides just his presence on the property. The Court found Respondent's testimony and reasons credible.

Respondent was trained to follow Interim Order #23, "Revision to Patrol Guide 212-60, 'Interior Vertical Patrol of Housing Authority Buildings.'" This order was in effect in February 2012<sup>1</sup> and stated:

[A] uniformed member of the service may approach and question persons who may be violating Housing Authority rules and regulations, including potentially unauthorized persons found in Housing Authority buildings.

In this case, Respondent approached and questioned Person A who he believed may not have been authorized to be on the property.

Interim Order #23 not only addresses interior building patrols for housing property but includes outdoor areas by "rear and other exterior doors". Officers are instructed to alternate their patrol "between outside patrol area and interior vertical patrol of Housing Authority grounds and buildings." They should "be alert for persons who may be violating Housing Authority rules and regulations, including potentially unauthorized persons within NYCHA property. Upon encountering such persons they are instructed to approach and question the person."<sup>2</sup>

Police officers were given additional guidance on how to conduct these vertical patrols at the police academy. During an academy training which focused on explaining

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<sup>1</sup> Interim Order (IO) #23 was updated in 2013 to P.G. 212-60, which is substantively consistent with IO # 23.

<sup>2</sup> This section of IO #23 is also in P.G. 212-60.

Interim Order #23, an instructor presented to Respondent and his classmates a power point presentation entitled, "Police Housing Developments Including Conducting Interior Vertical Patrols." RX A.

At this training officers were presented with hypothetical patrol scenarios and their proper responses. Scenario #1 introduced a situation in which "during a vertical patrol an officer notices someone standing near the elevators, the officer has been assigned to this development fairly regularly over the past several months and has gotten to know many of the residents of the building. The officer has never seen this person before. When requested, the person voluntarily shows valid identification establishing a right to be in the building." RX A.

Respondent noted that this training scenario was similar to the circumstances here, in which Respondent noticed Person A coming from rear door of the building. Respondent had been conducting routine patrols of this building for the past three months. He had become familiar with many faces and did not recognize Person A. Because there was a history in this area of arrests for trespassing, Respondent tried to ascertain whether Person A was a trespasser or someone he would now remember for future encounters. Thus, Respondent described reasons for questioning Person A besides Person A's presence on the property.

The questions Respondent asked Person A were therefore supported by an objective credible reason and constituted a request for information, the least obtrusive level of inquiry under *People v. De Bour*, 40 N.Y.2d 210, 352 N.E.2d 562 (1976). Under *De Bour*, the objective credible reason need not be "necessarily indicative of criminality." The Appellate Division in the First Department has concluded that the request for



information in a Manhattan public housing unit was based upon an objective, credible reason when “the building had a history of drug activity and trespassing, and although defendant's activities were not necessarily indicative of criminality, the officer was warranted in making an inquiry to determine if defendant was legitimately in the building.” *People v. Hendricks*, 43 A.D.3d 361 (N.Y. App. Div. 2007). The *Hendricks* Court also noted, “It is standard practice for officers, upon encountering an individual in such an area, to inquire whether the individual lives in the building or is an invited guest of a resident, and to ask for identification to determine if the individual is trespassing.”

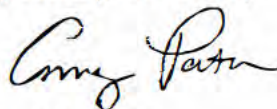
Based on the factors that Respondent enumerated, the Court cannot agree with CCRB’s assertion that Respondent’s only reason to question Person A was his presence on the property. Respondent had been conducting patrols for three months at this housing development property and become familiar with the people who lived there. When he saw Person A coming from the door of the building, he did not recognize him. He knew that crimes were being committed by off-property residents. He needed to ask Person A questions to ascertain whether Person A was a resident or a trespasser. Police procedure and case law demonstrate that Respondent had an objective credible reason to question Person A.

Accordingly, Respondent is found Not Guilty.

**APPROVED**

JAN 30 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

Respectfully submitted,



Amy J. Porter  
Assistant Deputy Commissioner - Trials